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AMENDED IN SENATE JUNE 23, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 394

Introduced by Assembly Member Kuehl
(Coauthors: Assembly Members Calderon, Dutra, Gallegos,
and Villaraigosa)
(Coauthors: Senators Burton Escutia, and Perata)

February 11, 1999

An act to add Section 2725.3 to the Business and Professions Code, and to add Section 1276.4 to the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 394, as amended, Kuehl. Health facilities: nursing staff.

Existing law provides for the licensing, registration, and regulation of nurses, and sets forth the scope of practice.

This bill would prohibit a general acute care hospital, an acute psychiatric hospital, and a special hospital, as defined, from assigning an unlicensed person to perform nursing functions in lieu of a registered nurse, or from allowing unlicensed personnel under the direct clinical supervision of a registered nurse to perform certain functions.

Existing law prohibits operation of a health facility, as defined, without a license issued by the State Department of Health Services and provides for the issuance of licenses and for the regulation of health facilities and sets forth the services to be provided therein. Willful or repeated violation of these provisions is a crime.

This bill would require the department, with regard to general acute care hospitals, acute psychiatric hospitals, and special hospitals, to adopt regulations that establish certain minimum nurse-to-patient ratios, and would require these health facilities to adopt written policies and procedures for training and orientation of nursing staff.

By changing the definition of an existing crime this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) Health care services are becoming complex and it
4 is increasingly difficult for patients to access integrated
5 services.

6 (b) Quality of patient care is jeopardized because of
7 staffing changes implemented in response to managed
8 care.

9 (c) To ensure the adequate protection of patients in
10 acute care settings, it is essential that qualified registered
11 nurses and other licensed nurses be accessible and
12 available to meet the needs of patients.

13 (d) The basic principles of staffing in the acute care
14 setting should be based on the patient's care needs, the



1 severity of condition, services needed, and the
2 complexity surrounding those services.

3 SEC. 2. Section 2725.3 is added to the Business and
4 Professions Code, to read:

5 2725.3. (a) A health facility licensed pursuant to
6 subdivision (a), (b), or (f), of Section 1250 of the Health
7 and Safety Code shall not assign unlicensed personnel to
8 perform nursing functions in lieu of a registered nurse
9 and may not allow unlicensed personnel to perform
10 functions under the direct clinical supervision of a
11 registered nurse that require a substantial amount of
12 scientific knowledge and technical skills, including, but
13 not limited to, any of the following:

14 (1) Administration of medication.

15 (2) Venipuncture or intravenous therapy.

16 (3) Parenteral or tube feedings.

17 (4) Invasive procedures including inserting
18 nasogastric tubes, inserting catheters, or tracheal
19 suctioning.

20 (5) Assessment of patient condition.

21 (6) Educating patients and their families concerning
22 the patient's health care problems, including
23 postdischarge care.

24 (7) Moderate complexity laboratory tests.

25 (b) This section shall not preclude any person from
26 performing any act or function that he or she is
27 authorized to perform pursuant to Division 2
28 (commencing with Section 500) or pursuant to existing
29 statute or regulation as of July 1, 1999.

30 SEC. 3. Section 1276.4 is added to the Health and
31 Safety Code, to read:

32 ~~1276.4. (a) A health facility licensed pursuant to~~
33 ~~subdivision (a), (b), or (f) of Section 1250 shall determine~~
34 ~~and provide nursing staffing in accordance with this~~
35 ~~section.~~

36 ~~(b) Not later than March 1, 2000, the State~~
37 ~~Department of Health Services shall adopt regulations~~
38 ~~that establish minimum, specific, and numerical licensed~~
39 ~~nurse-to-patient ratios for nursing staffing of hospital~~
40 ~~patient care units on a shift-by shift, day-by day basis for~~

~~1 all health care facilities licensed pursuant to subdivision
2 (a), (b), or (f) of Section 1250. These ratios shall establish
3 the minimum level of licensed nursing staffing necessary
4 to ensure safe and adequate patient care by providing
5 sufficient staffing to allow for the planning and delivery
6 of care for each patient in a manner that incorporates all
7 of the following elements of the nursing process:
8 assessment, nursing diagnosis, planning, intervention,
9 evaluation and, as circumstances require, patient
10 advocacy.~~

~~11 (e) The following nurse-to-patient ratios shall be
12 presumed by the department to be the minimum ratios
13 necessary for safe and adequate patient care:~~

~~14 (1) One licensed nurse to two patients to staff critical
15 care units, burn units, labor and delivery, postanesthesia
16 units, and critical patients in emergency departments
17 requiring care in an intensive care or critical care setting.
18 Licensed vocational nurses may constitute up to 50
19 percent of the licensed nurses. This ratio shall not apply
20 to neonatal intensive care units where there shall be one
21 registered nurse to two patients. The ratio of one
22 registered nurse to two critical care patients temporarily
23 held in the emergency departments shall be in addition
24 to the regularly scheduled emergency room staff.~~

~~25 (2) There shall be sufficient nursing personnel so that
26 one registered nurse is not servicing as circulating
27 assistant for more than one operating room.~~

~~28 (3) One licensed nurse to three patients to staff
29 pediatric and stepdown or intermediate care units.~~

~~30 (4) One licensed nurse to four patients to staff
31 specialty care and telemetry.~~

~~32 (5) One licensed nurse to six patients to staff general
33 medical care units that include subacute care and
34 transitional inpatient care units.~~

~~35 (d) The department shall not adopt regulations
36 providing for nursing staffing ratios that allow for lesser
37 numbers of licensed nursing staff to patients, unless the
38 department makes the following findings with respect to
39 each licensed nurse-to-patient ratio established for each
40 hospital patient care unit:~~

1 ~~(1) The ratios provide sufficient licensed nursing staff~~
2 ~~to ensure that all of the following elements of the nursing~~
3 ~~process are performed in the planning and delivery of~~
4 ~~care for each patient: assessment, nursing diagnosis,~~
5 ~~planning, intervention, evaluation and, as circumstances~~
6 ~~require, patient advocacy.~~

7 ~~(2) The ratios provide sufficient licensed nursing staff~~
8 ~~as defined in this section for each patient on a~~
9 ~~shift by shift, day by day basis to ensure safe and~~
10 ~~adequate nursing care.~~

11 ~~(3) The ratios do not assume or incorporate the~~
12 ~~assignment of any licensed nursing functions as defined~~
13 ~~in Section 2725.3 or duties to unlicensed assistive~~
14 ~~personnel.~~

15 ~~(e) If the department has not adopted nursing staffing~~
16 ~~ratio regulations as provided in this section or the~~
17 ~~regulations have not been implemented by March 1, 2000,~~
18 ~~the ratios established by this section as the presumptive~~
19 ~~minimum ratios necessary for safe and adequate patient~~
20 ~~care shall become immediately effective.~~

21 ~~(f) "Critical care unit" as used in this section means a~~
22 ~~unit that is established to safeguard and protect patients~~
23 ~~whose severity of medical conditions requires continuous~~
24 ~~monitoring and complex intervention by licensed nurses.~~

25 ~~(g) All health facilities licensed under subdivision (a),~~
26 ~~(b), or (f) or Section 1250 shall adopt written policies and~~
27 ~~procedures for training and orientation of nursing staff.~~

28 ~~(h) No nurse or other direct patient care staff shall be~~
29 ~~assigned to a nursing unit or clinical area unless that nurse~~
30 ~~or other direct patient care staff has first received~~
31 ~~orientation in that clinical area sufficient to provide~~
32 ~~competent care to patients in that area, and has~~
33 ~~demonstrated current competence in providing care in~~
34 ~~that area.~~

35 ~~(i) The written policies and procedures for orientation~~
36 ~~of nursing and direct patient care staff shall require that~~
37 ~~all temporary personnel shall receive the same amount~~
38 ~~and type of orientation as is required for permanent staff.~~

39 ~~(j) Requests for waivers to this section that do not~~
40 ~~jeopardize the health, safety, and well-being of patients~~

~~1 affected and that are needed for increased operational
2 efficiency may be granted by the department to rural
3 general acute care hospitals meeting the criteria set forth
4 in Section 70059.1 of Title 22 of the California Code of
5 Regulations.~~

~~6 (k) In case of conflict between this section and any
7 provision or regulation defining the scope of nursing
8 practice, the scope of practice provisions shall control.~~

9 1276.4. (a) By January 1, 2001, the State Department
10 of Health Services shall adopt regulations that establish
11 minimum, specific, and numerical licensed
12 nurse-to-patient ratios by licensed nurse classification and
13 by hospital unit for all health facilities licensed pursuant
14 to subdivision (a), (b), or (f) of Section 1250. The
15 department shall adopt these regulations in accordance
16 with the department's licensing and certification
17 regulations as stated in Sections 70053.2, 70215, and 70217
18 of Title 22 of the California Code of Regulations, and the
19 professional and vocational regulations in Section 1443.5
20 of Title 16 of the California Code of Regulations. The
21 department shall review these regulations five years after
22 adoption and shall report to the Legislature regarding
23 any proposed changes. Flexibility shall be considered by
24 the department for rural general acute care hospitals in
25 response to their special needs. As used in this subdivision,
26 "hospital unit" means a critical care unit, burn unit, labor
27 and delivery room, postanesthesia service area,
28 emergency department, operating room, pediatric unit,
29 step-down/intermediate care unit, specialty care unit,
30 telemetry unit, general medical care unit, subacute care
31 unit, and transitional inpatient care unit. The regulation
32 addressing the emergency department shall distinguish
33 between regular licensed nurses and licensed nurses
34 required to care for critical care patients in the
35 emergency department.

36 (b) These ratios shall constitute the minimum number
37 of registered and licensed nurses that shall be allocated.
38 Additional staff shall be assigned in accordance with a
39 documented patient classification system for
40 determining nursing care requirements, including the

1 severity of the illness, the need for specialized equipment
2 and technology, the complexity of clinical judgment
3 needed to design, implement, and evaluate the patient
4 care plan and the ability for self-care, and the licensure
5 of the personnel required for care.

6 (c) "Critical care unit" as used in this section means a
7 unit that is established to safeguard and protect patients
8 whose severity of medical conditions requires continuous
9 monitoring, and complex intervention by licensed
10 registered nurses.

11 (d) All health facilities licensed under subdivision (a),
12 (b), or (f) or Section 1250 shall adopt written policies and
13 procedures for training and orientation of nursing staff.

14 (e) No registered nurse shall be assigned to a nursing
15 unit or clinical area unless that nurse has first received
16 orientation in that clinical area sufficient to provide
17 competent care to patients in that area, and has
18 demonstrated current competence in providing care in
19 that area.

20 (f) The written policies and procedures for orientation
21 of nursing staff shall require that all temporary personnel
22 shall receive orientation and be subject to competency
23 validation consistent with Sections 70016.1 and 70214 of
24 Title 22 of the California Code of Regulations.

25 (g) Requests for waivers to this section that do not
26 jeopardize the health, safety, and well-being of patients
27 affected and that are needed for increased operational
28 efficiency may be granted by the state department to
29 rural general acute care hospitals meeting the criteria set
30 forth in Section 70059.1 of Title 22 of the California Code
31 of Regulations.

32 (h) In case of conflict between this section and any
33 provision or regulation defining the scope of nursing
34 practice, the scope of practice provisions shall control.

35 SEC. 4. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the only costs that may be incurred
38 by a local agency or school district will be incurred
39 because this act creates a new crime or infraction,
40 eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section
2 17556 of the Government Code, or changes the definition
3 of a crime within the meaning of Section 6 of Article
4 XIII B of the California Constitution.

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